



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04666/2018

**THE IMMIGRATION ACTS**

Heard at Liverpool Civil and Family Court  
On 27<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 21<sup>st</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[M A]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

**Representation:**

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer  
For the Respondent: Mr A Khan of Manchester Associates Legal Service

**DECISION AND REASONS**

**Introduction and Background**

1. The Secretary of State appeals against a decision of Judge Saffer (the judge) of the First-tier Tribunal (the FTT) promulgated on 16<sup>th</sup> May 2018.
2. The Respondent before the Upper Tribunal was the Appellant before the FTT and I will refer to him as the Claimant.

3. The Claimant is a male citizen of Iraq born 4<sup>th</sup> February 1995. He is Kurdish and from Sulaymaniyah in the Iraqi Kurdish Region (the IKR).
4. The Claimant claimed international protection on the basis that he feared the family of a girl with whom he had had a relationship. Her family did not approve and had threatened to kill him. As a result of those threats the Claimant had fled from Iraq.
5. On 11<sup>th</sup> March 2018 the Secretary of State refused the claim for international protection, and took the view that the Claimant's removal from the UK would not breach any of his human rights protected by the 1950 European Convention on Human Rights (the 1950 Convention). The Secretary of State accepted that the Claimant is an Iraqi citizen of Kurdish ethnicity, from the IKR. It was not accepted that he was the potential victim of an honour killing.
6. The appeal was heard by the FTT on 9<sup>th</sup> May 2018. The Claimant was not legally represented. The judge heard evidence from the Claimant and a witness and allowed the appeal on asylum and human rights grounds, finding that the Claimant would be at risk if returned to Iraq.
7. The Secretary of State applied for permission to appeal to the Upper Tribunal. The grounds are summarised below.
8. It was submitted that the findings made by the judge are contained in paragraphs 23 and 24, and that these paragraphs lack adequate analysis and adequate reasoning.
9. It was submitted that the judge had given no reasons for finding that the girl's family has influence within the IKR and can act with impunity. The judge's conclusion that he could not expect the Appellant to be more knowledgeable about his girlfriend's family because he was only 22 years of age, was not accepted to be a valid reason, and it was submitted was an irrational finding. The lack of any background evidence to indicate the girlfriend's family had influence within the IKR was noted.
10. In addition to providing inadequate reasoning and analysis, it was submitted that the judge had materially erred in law in consideration of internal relocation. It was contended that the judge had not properly engaged with this issue. Background evidence had not been taken into account, which indicated that the PUK had a power base in Sulaymaniyah, whereas the KDP, a completely separate organisation, had a power base in Erbil. The Appellant's case was that his girlfriend's father was a high ranking member of the PUK, and therefore the judge should have considered, if that was accepted, whether there was an internal relocation option to an area controlled by the KDP.
11. Permission to appeal was granted by Judge E B Grant of the FTT in the following terms;
  - "2. In a remarkably brief decision it can be argued that the judge has given inadequate reasons for the findings set out at paragraphs 23 and 24 of the decision. The grounds submit that the judge has given no reasons whatsoever for finding that Didar's family have influence and can act with impunity, in the absence of any background material to confirm the influence of the family, and upon a careful reading of the decision, it can be seen that the grounds are made out.

3. All the grounds may be argued.”
12. Following the grant of permission the Claimant, who by this time had instructed legal representatives, lodged a response pursuant to rule 24 of the Asylum Procedure (Upper Tribunal) Rules 2008. The response contends that the judge did not materially err in law, and correctly considered all the evidence and made findings open to him on the evidence. It was contended that sustainable reasons for the findings had been given.
13. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

### **The Upper Tribunal Hearing**

14. On behalf of the Secretary of State reliance was placed on the grounds contained within the application for permission to appeal. It was submitted that the FTT decision was entirely lacking in consideration of points raised in the reasons for refusal decision.
15. It was submitted that adequate reasons for findings had not been given, and it was not clear why the judge had made findings. Mr McVeety described as perverse a finding by the judge that the Claimant could not be expected to be more knowledgeable about his girlfriend’s father, and his alleged position of influence, because he was only 22 years of age.
16. I was asked to find that background evidence confirmed that the KDP and PUK are completely separate entities, and the judge had completely failed to consider an option of internal relocation within the IKR, on the basis that if the girlfriend’s family held influence within the PUK, the Claimant could relocate to a KDP controlled area.
17. Mr Khan made submissions on the Claimant’s behalf, relying upon the rule 24 response, and disagreeing with the submissions made on behalf of the Secretary of State. I was asked to find that the decision of the judge was concise and to the point and the judge had considered all relevant evidence.
18. It was submitted that the judge was entitled to find that the girlfriend’s family were very powerful within the PUK because the Claimant had explained in interview that this is what he had been told. Mr Khan submitted that just because the judge “had not provided reasons for everything”, did not mean that he had not considered everything relevant.
19. It was contended that the judge had not made assumptions but had considered all evidence, and made findings open to him to make on that evidence. I was asked to find no error of law.
20. In response Mr McVeety submitted that the judge had not taken into account all evidence, as he had not considered background evidence which indicated that the Claimant would not be at risk of honour killing, and this evidence was referred to in the refusal decision. I was asked to find that it could not be assumed that the judge had read all the evidence, but the judge needed to demonstrate this. It was submitted

that a reading of the refusal decision showed the numerous issues that had been raised but had not been considered by the judge.

21. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

22. Guidance on the duty to give reasons for decisions is contained in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC), the headnote of which is set out below;

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”

23. The judge granting permission to appeal comments upon the brevity of the FTT decision. In my view brevity is not an error of law, and is to be commended, provided all relevant matters have been considered, findings made and reasons given.
24. I have considered whether the grounds raised by the Secretary of State disclose a material error of law, or amount to a disagreement with findings made by the judge, who had the benefit of considering the documentary evidence, and hearing oral evidence.
25. I conclude that the FTT did materially err in law as contended by the Secretary of State. I find that the judge failed to adequately engage with the reasons given for refusal, in the refusal decision dated 11<sup>th</sup> March 2018. It is not clear from reading the FTT decision, why the judge accepted the Claimant’s account in its entirety, and rejected all the reasons given by the Secretary of State for refusing the claim for international protection.
26. By way of example the refusal decision dated 11<sup>th</sup> March 2018 makes reference to objective background evidence in relation to Kurdish honour crimes. At paragraph 27 it is pointed out that several aspects of the Claimant’s claim run counter to background country information, and the Secretary of State then provides reasons for not accepting the credibility of the Claimant’s account, which are included at paragraphs 27-38, at pages 6-9 of the refusal decision. The Secretary of State’s case as set out in that refusal decision is that it is accepted that the Claimant is a Kurdish Iraqi from the IKR, but his claim to be a potential victim of an honour killing is rejected.
27. I do not find that the judge engaged with the numerous points made in the refusal decision. Findings made by the judge are contained in paragraphs 23 and 24, and the judge does not give adequate reasons to explain why the Claimant’s account is accepted.
28. The judge has accepted that the girlfriend’s family (paragraph 24) “have influence and can act with impunity given the recent action against his father and sisters, the truth of which I have no real reason to doubt.” The Claimant’s account was that he was told that his girlfriend’s father held a high rank but when asked in interview in what way he was powerful, he did not know. He then went on to say (question 136) that the

father was a powerful man in “this party and this party is powerful”. It appears that very little evidence, if any, was given to indicate to a reasonable degree of likelihood that the girlfriend’s family have influence and can act with impunity. I do find it irrational for the judge to comment at paragraph 23 that he did not expect the Appellant to be more knowledgeable about the girlfriend’s father because he was only 22 years of age. That is not, in my view, an adequate explanation for displaying a lack of knowledge, and then proceeding to make a finding that the vague evidence given by the Claimant in relation to the girlfriend’s father shows that he can act with impunity and has influence throughout the IKR.

29. With reference to internal relocation, background evidence does indicate that the KDP and PUK are based in separate areas within the IKR, one being in Sulaymaniyah, the other being in Erbil. The judge does not adequately consider internal relocation within the IKR. Inadequate reasons are given for accepting that the girlfriend’s family have members working at the airport.
30. The judge has not complied with the duty summarised in Budhathoki to give adequate reasons for decisions and to resolve key conflicts in the evidence. The Secretary of State is entitled to complain that it is not clear why the Claimant’s account has been accepted, in preference to the issues raised in the refusal decision. The judge does not refer to any independent background evidence which supports the Claimant’s account.
31. In my view, the decision of the FTT is unsafe and is therefore set aside with no findings preserved.
32. The decision needs to be remade. I have considered paragraph 7 of the Senior President’s Practice Statements, and find it is appropriate to remit the appeal back to the FTT because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
33. The parties will be advised of the time and date in due course. The appeal is to be heard by an FTT Judge other than Judge Saffer.

### **Notice of Decision**

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent it is remitted to the FTT with no findings of fact preserved.

The FTT made no anonymity direction. There has been no request made to the Upper Tribunal for anonymity and I see no need to make an anonymity order.

Signed

Date 2<sup>nd</sup> August 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The issue of any fee award will need to be considered by the FTT.

Signed

Date 2<sup>nd</sup> August 2018

Deputy Upper Tribunal Judge M A Hall